Supreme Court, U.S.
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No. 02-1860

IN THE

Supreme Court of the United States

DENNIS M. TROHA, JHT HOLDINGS INC. and ACTIVE TRANSPORTATION COMPANY, LLC,
Petitioners,

v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE and TEAMSTERS LOCAL UNION 745, affiliated with the International Brotherhood of Teamsters, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, under the common law arising under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (2000), a federal court has subject matter jurisdiction over an action to enforce a labor arbitration subpoena issued to a non-signatory witness?

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STATEMENT OF THE CASE

The Respondents incorporate by reference the statement of the case set forth in the Court of Appeals' opinion, *Teamsters Automobile Transporters Industry Negotiating Committee v. Troha,* 328 F. 3d 325 (7th Cir. 2003).

REASONS FOR DENYING THE WRIT

In a unanimous decision, the Seventh Circuit Court of Appeals held that under the common law of § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (2000),[1]

[1] The statutory basis for jurisdiction was 28 U.S.C. §1331 (2000).

the district court had subject matter jurisdiction to enforce the labor arbitration subpoena issued to non-signatories JHT Holdings, Inc. and Dennis M. Troha. In recognizing that the Teamsters' complaint raised a federal question, the Court of Appeals simply exercised its authority to create common law to achieve the purposes of § 301. The authority of the federal courts to create common law under § 301 has been acknowledged for nearly half-a-century. There is nothing novel or new in the Court of Appeals' decision that would merit review.

In *Textile Workers Union v. Lincoln Mills*, this Court first recognized that Congress had authorized federal courts to create federal common law under § 301 of the Labor Management Relations Act:

> We conclude that the substantive law to apply in suits under § 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws. The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem.[2]

Because Congress both "authorized" and "expects" courts to create a common law under §301, the Court of Appeals was not required to look for a specific congressional intent in order to create a remedy for the Teamsters.[3] Instead, the

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[2] *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 456-57 (1957).

[3] *Plucinski v. I.A.M. Nat'l Pension Fund*, 875 F. 2d 1052, 1056 (3rd Cir. 1989) *cited with approval in UIU Severance Pay Trust Fund v. Local Union 18-U, United Steelworkers*, 998 F. 2d 509, 512 n.10 (7th Cir. 1993).

inquiry is whether the judicial creation of a right in this instance is "necessary to fill in interstitially or otherwise fulfill the statutory pattern enacted by Congress." [4] As the Court of Appeals found, the enforcement of labor arbitration subpoenas issued to non-signatories clearly does fulfill the purposes of §301: "A collective bargaining agreement that requires arbitration is powerless if the parties to the arbitration cannot present evidence in the form of third person testimony or documents possessed by third parties." [5]

There is agreement among the Circuit Courts of Appeals on this issue. The only other Circuit Court of Appeals to have addressed this question also held that enforcement of a labor arbitration subpoena issued to a non-signatory is a federal cause of action.[6]

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully Submitted,

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[4] *Id.*

[5] *Troha*, 328 F. 3d at 330.

[6] *Am. Fed'n of TV & Radio Artists v. WJBK-TV*, 164 F.3d 1004 (6th Cir. 1999).